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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/922,297
Filing Date: August 3, 2001
Applicant: Jane I. Potter
Group Art Unit: 3627
Examiner: Vanel Frenel
Title: Method Of Administering A Health Plan
Attorney Docket: 4371-000002

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF
UNDER 37 C.F.R. § 41.37

Sir:

The Notice of Appeal in this Application was mailed on February 23, 2007.
This brief is submitted with the fee required under 37 C.F.R. §1.17(f).

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APPELLANT'S BRIEF ON APPEAL

Pursuant to 37 C.F.R. §41.37, this Brief on Appeal is submitted as follows:

REAL PARTY IN INTEREST – UNDER 37 C.F.R. § 41.37(c)(1)(i)

The real parties in interest in this appeal is Right Choice Managed Care, Inc., a corporation of the state of Delaware, having its principle place of business at 1831 Chestnut Street, St. Louis, Missouri, 63103, by virtue of the recorded assignment at Reel No. 012063, Frame No. 0372.

RELATED APPEALS & INTERFERENCES - UNDER 37 C.F.R. § 41.37(c)(1)(ii)

To the best of Appellants' knowledge, no other appeals or interferences are pending which will directly affect, be directly affected by or have a bearing on the Board's decision in the present pending appeal.

STATUS OF THE CLAIMS – UNDER 37 C.F.R. § 41.37(c)(1)(iii)

On February 23, 2007, the Final Rejection of Claims 1 -46 was Appealed.

- A copy of the claims presently being appealed (i.e., Claims 1-46) is provided in the attached Claims Appendix.
- A copy of the Final Office Action mailed November 15, 2006 placing the presently pending claims 1 - 46 of the present application under final rejection is provided in the attached Evidence appendix.

STATUS OF AMENDMENTS – UNDER 37 C.F.R. § 41.37(c)(1)(iv)

A Final Office Action was mailed November 15, 2006. Subsequently, an Amendment after Final was mailed January 10, 2007, in response to which an Advisory Action was mailed February 9, 2007, stating the Amendment After Final would not be entered for purposes of appeal, and that claims 1-46 stand rejected.

SUMMARY OF THE CLAIMED SUBJECT MATTER – UNDER 37 C.F.R. § 41.37(c)(1)(v)

Independent Claim 1 recites a method of compensating a health service provider providing health services in service episodes to health plan members. The method comprises:

sharing a portion of the cost savings resulting from the provider's reduction of actual average cost per service episode compared to a predetermined budgeted average cost per service episode, the portion depending in part upon the provider's average cost per service episode compared to an average cost per service episode of providers to the members, and in part upon the provider's performance on at least one of a quality measure and a member satisfaction measure, wherein information on the average cost per service episode is periodically distributed to the health service provider, for motivating the health service provider to more efficiently manage service episodes to keep their cost per service episode below the predetermined budgeted average.

With regard to claim 1, paragraph [0064] of the present application states that if there is a net cost savings the group will be entitled to share in the savings. Paragraph [0064] also states "If the actual performance of a group is below its budget, after that budget is adjusted ... the group is entitled to share in the cost saving, if any".

With regard to the distribution of average cost to a service provider, paragraph [0052] states that once the group's budget is determined, the physicians in the group perform health services during the year, and that

statistics regarding the group, and of other groups in the network are collected and distributed. These reports provide valuable utilization and measure performance information and may enable the physicians in the groups to better manage their patient's health needs.

Independent Claim 10 recites a method of compensating a group of physicians providing health services in service episodes to health plan members. The method comprises:

sharing a portion of the cost savings resulting from the reduction of the group's actual average cost per service episode compared to a predetermined budgeted average cost per service episode, the portion depending in part upon the group's average cost per service episode compared to an average cost per service episode of groups providing service to the members, and in part upon the group's performance on at least one of a quality measure and a member satisfaction measure.

With regard to claim 10, paragraph [0064] of the present application states that if there is a net cost savings the group will be entitled to share in the savings. Paragraph [0064] also states "If the actual performance of a group is below its budget, after that budget is adjusted ... the group is entitled to share in the cost saving, if any".

Independent Claim 18 recites a method of compensating physicians for managing the cost and quality of health care services provided to members of a health plan served by a plurality of physician groups. The method comprises:

developing a budgeted cost per episode of patient for a program period for at least one physician group based at least in part on the historic actual performance of the group; compiling data on actual cost per episode of patient care during the program period; comparing the group's actual cost per episode of patient care during the program period with the group's budgeted cost per episode of patient care for the program period, adjusted for changes in the severity of illness of the patients treated; sharing a portion of the savings resulting from a reduction in actual cost per episode of patient care with the group, the portion depending upon the group's performance on a quality and/or patient satisfaction indicator.

With regard to claim 18, paragraph [0064] of the present application states that if there is a net cost savings the group will be entitled to share in the savings provided that the group also met at a minimum Level I quality standards. Paragraph [0064] also states "If the actual performance of a group is below its budget, after that budget is adjusted for changes in case severity and inflation, and the group achieves at least the Level I quality goal, then the group is entitled to share in the cost saving, if any".

Independent Claim 34 recites a method for managing the cost of health services provided to members of a health plan served by a plurality of physician groups, by compensating physician groups for managing the cost and quality of health care services. The method comprises:

sharing with a group a portion of the cost savings resulting from that group's reduction in the cost episode of patient care during a period from a predetermined budgeted cost per episode of patient care for that period, the portion being determined at least in part by the group's performance on a quality and/or patient satisfaction indicator.

With regard to claim 34, paragraph [0064] of the present application states that if there is a net cost savings the group will be entitled to share in the savings provided that the group also met at a minimum Level I quality standards. Paragraph [0064] also states "If the actual performance of a group is below its budget, after that budget is adjusted for changes in case severity and inflation, and the group achieves at least the Level I quality goal, then the group is entitled to share in the cost saving, if any".

GROUND FOR REJECTION TO BE REVIEWED ON APPEAL – UNDER 37 C.F.R. § 41.37(c)(1)(vi)

Appellants present the following issues for review:

1. Is the invention set forth in Claims 1-46 non-obvious over Torma (U.S. Pat. No. 5,365,425) in view of Lockwood (U.S. Pat. No. 5,845,254).?

ARGUMENT – UNDER 37 C.F.R. § 41.37(c)(1)(vii)

1. 1st GROUND OF REJECTION ON APPEAL

Pursuant to 37 C.F.R. § 41.37(c)(1)(vii), the following provides the contentions of appellants with respect to the 1st ground of rejection above presented for review in accordance with 37 C.F.R. § 41.37(c)(1)(vi).

Claims 1, 10, 18 and 34

Appellants respectfully contend that the Examiner has failed to establish a prima facie case obviousness. The MPEP plainly states:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP § 2143).

Appellant respectfully submits that the references do not teach all the claimed limitations, and that there is no suggestion within the references to modify the teachings to arrive at the claimed invention.

II. The Combined References Fail to Teach or Suggest all the Claim Limitations

Appellants initially note that the references relied upon for the sole rejection now under appeal fail to disclose all the claimed limitations. Specifically, neither Torma nor Lockwood teach nor suggest the following claimed features:

- periodically distributing information on the average cost per episode to the health service provider
- sharing a portion of cost savings resulting from a reduction in cost per episode, as an incentive method of periodically distributing information

In rejecting claim 1, the Final Office Action states on page 2 that Torma discloses a method of sharing a portion of the cost savings resulting from the provider's reduction of actual average cost per service episode compared to a predetermined budgeted average cost per service episode, and refers the Appellant to Torma, col. 9, lines 6-48. However, Torma teaches the comparison of costs for military care facilities versus civilian care facilities, and states:

“costs for direct care (care given in military facilities by military physicians) are computed as well as the costs of indirect care (through CHAMPUS) by civilian physicians... Although accounting practices in the military differ widely from those used in the civilian sector, it is possible to compare military-medical costs on a per patient basis with similar costs in civilian hospitals.” (Torma, col. 9, lines 8-41).

Torma further teaches that:

“These facilities can now be examined to determine appropriate staffing levels, practices and procedures, and other aspects that set these facilities apart from the others. Likewise, the other SAC hospitals that did not meet the established standards can be examined to determine where improvements are necessary... “by pinpointing those hospitals and physicians that provide the highest quality of care at reduced cost, the factors that make this care possible can be determined and exported to other treatment facilities.” (Torma, col. 11, lines 26-47, and col. 12, lines 47-57).

Thus, Torma merely teaches the comparison of respective care facility costs and determination of factors that make quality care at a reduced cost possible. Torma does not disclose or even suggest sharing with a physician group a portion of costs savings resulting from a reduction in cost per episode, as in claims 1, 10, 18 and 34. Such a method provides an incentive method for reducing the health care costs on a cost per episode basis. The Appellant accordingly submits that Torma does not disclose or even suggest such a feature, and that claims 1, 10, 18 and 34 cannot be obvious in view of Torma.

Moreover, Appellant submits that neither of the references disclose the feature in claims 1 and 46 of periodically distributing information on the average cost per episode to the health service provider. In rejecting claim 46, the Final Office Action states that Lockwood discloses the step of periodically distributing

information on the average cost per service episode to the provider, and refers the Appellant to Lockwood, Col. 13, lines 30-39, which states:

“In instances where there has been a budgetary overrun and the quality performance percentage associated with treating the selected condition (from step 210) is below the industry standard, this fact is signaled to the network administrator through workstation 90. The administrator may then take corrective action by, for example instructing the providers in the network to schedule and perform further procedures so as to improve the quality performance percentage of the network as a whole for the selected condition”.

The Appellant notes that Lockwood does not teach periodically distributing information on average cost per episode to the health service provider. Rather, Lockwood only teaches the communication of quality performance percentages to an administrator for the purpose of improving the quality performance percentage. The Appellant accordingly submits that Lockwood does not disclose or even suggest such a feature, and that claim 1 cannot be obvious in view of Lockwood.

Thus, the Appellants submit that the references themselves *fail to disclose all of the claimed elements*, which is an omission of an essential element needed for a prima facie Obviousness rejection.

I. There is no Suggestion or Motivation to Modify the References

It is insufficient to establish obviousness based on separate elements of the invention existing in the references, absent some motivation, desirability or suggestion in the references themselves to combine the reference elements. *Ruiz v. A.V. Chance Co.*, 57 USPQ2d 1161, 1167 (Fed Cir 2000). The court noted "the best defense against the subtle but powerful attraction of hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references". *Id.* In *Ruiz*, the court concluded there were no findings of a disadvantage in prior foundation underpinning systems, such that the "nature of the problem" would have motivated a person of ordinary skill to combine the prior art references to reach the claimed invention on a method of underpinning employing screw anchors. *Id.* at 1163, 1168.

In the present case, Torma discloses a method that allows for comparing military medical costs on a per patient basis with similar costs in civilian hospitals or other military treatment facilities. Torma further discloses that where a clinic is performing below average and only two physicians are the cause, then actions can be implemented to change the practice patterns of the two physicians. (See Torma, column 7 lines 43-45, column 9 lines 39-46, can column 12 lines 36-41)

Lockwood discloses that in instances where there has been a budgetary overrun and the quality performance percentage associated with treating a selected condition is below the industry standard, the administrator may take corrective action by instructing the providers to improve the quality or efficiency

of their performance. (See Lockwood, column 13, lines 5-11 and lines 30-39). Since both references teach the implementation of changes to improve the quality or quality performance percentage, there is no finding of a disadvantage in the Torma or Lockwood methods that would have motivated a person of ordinary skill to modify their teachings to arrive at the claimed invention of sharing with a physician group a portion of cost savings as an incentive to reduce health care costs.

Thus, the Appellants submit that the references themselves *fail to provide a motivation to modify the references in a manner that would arrive at the claimed invention*, which is an omission of an essential element needed for a prima facie Obviousness rejection.

Claim 18

Furthermore, claim 18 recites a method in which the portion of savings shared with the health service provider group depends upon the group's performance on a quality and/or patient satisfaction indicator. Neither Torma nor Lockwood teach or suggest a method for motivating health service providers that includes sharing a portion of cost savings in service episodes, which portion is based upon the group's performance on a quality and/or patient satisfaction indicator. As such, the Appellants further submit that 18 is also non-obvious in view of Torma or Lockwood.

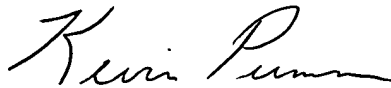
Claims 2-9, 11-17, 19-33, and 35-46

With regard to claims 2-9, 11-17, 19-33, and 35-46, these claims ultimately depend from claims 1, 10, 18 or 34, which Appellants believe to be non-obvious and allowable in view of the above remarks. As such, the Appellants submit that claims 2-9, 11-17, 19-33, and 35-46, are also non-obvious and allowable for at least these reasons.

CONCLUSION

Appellant respectfully submits that the Examiner has not shown that claims 1-46 are obvious over Lockwood or Torma. Accordingly, reversal of the rejections of Claims 1 - 46 are respectfully requested.

Respectfully submitted,



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CLAIMS APPENDIX
UNDER 37 C.F.R. § 41.37(c)(1)(viii)

1. (Previously Presented) A method of compensating a health service provider providing health services in service episodes to health plan members, the method comprising sharing a portion of the cost savings resulting from the provider's reduction of actual average cost per service episode compared to a predetermined budgeted average cost per service episode, the portion depending in part upon the provider's average cost per service episode compared to an average cost per service episode of providers to the members, and in part upon the provider's performance on at least one of a quality measure and a member satisfaction measure, wherein information on the average cost per service episode is periodically distributed to the health service provider, for motivating the health service provider to more efficiently manage service episodes to keep their cost per service episode below the predetermined budgeted average.

2. (Original) The method according to claim 1 wherein the provider's actual average cost per service episode and the budgeted average cost per service episode are indexed to the same level of episode severity before comparison.

3. (Original) The method according to claim 1 wherein the provider's actual average cost per service episode and the average cost per service episode of care of providers to the members of the health plan are indexed to the same level

of episode severity before comparison.

4. (Original) The method according to claim 1 wherein the portion of the cost savings shared with the provider depends upon whether the provider's average cost per service episode is above or below the median average cost per service episode of care of providers to the members of the health plan.

5. (Original) The method according to claim 1 wherein the portion of the cost savings shared with the provider depends in part upon the provider's performance on a quality measure.

6. (Original) The method according to claim 1 wherein the portion of the cost savings shared with the provider depends in part upon the provider's performance on a member satisfaction measure.

7. (Original) The method according to claim 1 wherein the portion of the cost savings shared with the provider depends in part upon the provider's performance on a measure of quality measure and member satisfaction.

8. (Original) The method according to claim 1 wherein the service provider is a group of individuals.

9. (Original) The method according to claim 1 wherein the service provider is a

group of individuals in a particular medical specialty, and wherein the comparison between the provider's average cost per service episode and an average cost per service episode of care of providers providing service to the members of the health plan is made with providers in the same medical specialty.

10. (Original) A method of compensating a group of physicians providing health services in service episodes to health plan members, the method comprising sharing a portion of the cost savings resulting from the reduction of the group's actual average cost per service episode compared to a predetermined budgeted average cost per service episode, the portion depending in part upon the group's average cost per service episode compared to an average cost per service episode of groups providing service to the members, and in part upon the group's performance on at least one of a quality measure and a member satisfaction measure.

11. (Original) The method according to claim 10 wherein the group's actual average cost per service episode and the group's budgeted average cost per service episode are indexed to the same level of episode severity before comparison.

12. (Original) The method according to claim 10 wherein the group's actual average cost per service episode and the average cost per service episode of care of the group's serving the health plan members are indexed to the same

level of episode severity before comparison.

13. (Original) The method according to claim 10 wherein the portion of the cost savings shared with the group depends upon whether the group's average cost per service episode is above or below the mean of the average cost per service episode of care of groups providing the same type of health service to the members of the health plan.

14. (Original) The method according to claim 10 wherein the portion of the cost savings shared with the group depends in part upon the group's performance on a quality measure.

15. (Original) The method according to claim 10 wherein the portion of the cost savings shared with the provider depends in part upon the group's performance on a member satisfaction measure.

16. (Original) The method according to claim 10 wherein the portion of the cost savings shared with the provider depends in part upon the group's performance on a quality measure and a member satisfaction measure.

17. (Original) The method according to claim 10 wherein the group is a group of individuals in a particular medical specialty, and wherein the comparison between the group's average cost per service episode and the average cost per

service episode of care of groups providing service to the members of the health plan is made only with groups in the same medical specialty.

18. (Original) A method of compensating physicians for managing the cost and quality of health care services provided to members of a health plan served by a plurality of physician groups, the method comprising: developing a budgeted cost per episode of patient for a program period for at least one physician group based at least in part on the historic actual performance of the group; compiling data on actual cost per episode of patient care during the program period; comparing the group's actual cost per episode of patient care during the program period with the group's budgeted cost per episode of patient care for the program period, adjusted for changes in the severity of illness of the patients treated; sharing a portion of the savings resulting from a reduction in actual cost per episode of patient care with the group, the portion depending upon the group's performance on a quality and/or patient satisfaction indicator.

19. (Original) The method according to claim 18 wherein the sharing of a portion of the savings is also dependent on the group's performance relative to other physicians.

20. (Original) The method according to claim 19 wherein the sharing of a portion of the savings of a group is dependant on a comparison of a measure of the group's cost per episode of patient care with a measure of other physicians' cost

per episode of patient care.

21. (Original) The method according to claim 20 wherein the measure of the group's cost per episode of patient care and the measure of other physicians' cost per episode of patient care is indexed to the same level of episode severity before comparison.

22. (Original) The method according to claim 18 wherein the portion of savings shared with the group depends upon the group's performance on a quality indicator relative to other physicians' performance on the quality indicator.

23. (Original) The method according to claim 18 wherein the quality indicator includes a measurement of the number of patients with a particular diagnosis receiving a particular treatment.

24. (Original) The method according to claim 18 wherein the quality indicator includes a measurement of the number of patients with a particular diagnosis not receiving a particular treatment.

25. (Original) The method according to claim 18 wherein the quality indicator includes a measurement based on survey responses of plan members treated by the group.

26. (Original) The method according to claim 18 wherein a group's budgeted cost per episode of patient care is determined based at least in part on the historic performance of the individual physicians in the group.

27. (Original) The method according to claim 26 wherein the weight given to the historic performance of an individual physician in the group depends upon that physician's total number of episodes of care.

28. (Original) The method according to claim 26 wherein the weight given to the historic performance of an individual physician in the group depends upon the physician's number of episodes of care and the physician's medical specialty.

29. (Original) The method according to claim 18 wherein the budgeted cost per episode of patient care and the actual cost per episode of patient care exclude outpatient prescription pharmaceuticals.

30. (Original) The method according to claim 18 wherein the comparison between group's actual cost per episode of patient care during the program period with the group's budgeted cost per episode of patient care for the program period, is adjusted to take into account inflation between the time of the budget and the program period.

31. (Original) The method according to claim 30 wherein the adjustment to take

into account inflation is implemented by increasing the group's budgeted cost per episode of patient care.

32. (Original) The method according to claim 30 wherein the adjustment to take into account inflation is implemented by decreasing the group's actual cost per episode of patient care.

33. (Original) The method according to claim 18 wherein the adjustment for changes in the severity of illness of the patients treated comprises indexing the relative costs of the episodes of care used in determining budgeted cost per episode of patient care, and the relative costs of the episodes of care used in determining the actual cost per episode of patient care.

34. (Original) A method managing the cost of health services provided to members of a health plan served by a plurality of physician groups, by compensating physician groups for managing the cost and quality of health care services, the method comprising: sharing with a group a portion of the cost savings resulting from that group's reduction in the cost episode of patient care during a period from a predetermined budgeted cost per episode of patient care for that period, the portion being determined at least in part by the group's performance on a quality and/or patient satisfaction indicator.

35. (Original) The method according to claim 34 wherein the portion is

determined by the group's performance on a quality indicator relative to other physician's performance on that quality indicator.

36. (Original) The method according to claim 34 wherein the budgeted cost per episode of patient care is based at least in part upon the group's historical performance.

37. (Original) The method according to claim 36 wherein the weight give to a group's historical performance depends upon the number of years of data for the group.

38. (Original) The method according to claim 37 wherein the weight given to a group's historical performance depends upon the number of years of data for the group and the group's specialty.

39. (Original) The method according to claim 36 wherein the weight given to the historic performance of an individual physician in the group depends upon the physician's number of episodes of care and the physician's medical specialty.

40. (Original) The method according to claim 36 wherein the budgeted cost per episode of patient care is based in part on the historic performance of the individual physicians in the group.

41. (Original) The method according to claim 34 wherein the quality indicator includes a measurement of the number of patients with a particular diagnosis receiving a particular treatment.

42. (Original) The method according to claim 34 wherein the sharing of a portion of the savings is also dependent on the group's performance relative to other physicians

43. (Original) The method according to claim 42 wherein the sharing of a portion of the savings of a group is dependant on a comparison of a measure of the group's cost per episode of patient care with a measure of other physician's cost per episode of patient care.

44. (Original) The method according to claim 34 wherein the quality indicator includes a measurement of the number of patients with a particular diagnosis not receiving a particular treatment.

45. (Original) The method according to claim 34 wherein the quality indicator includes a measurement based on survey responses of plan members treated by the group.

46. (Previously Presented) The method according to claim 1 further comprising the step of periodically distributing information on the average cost per service

episode to the health service provider, for motivating the health service provider to more efficiently manage service episodes to keep their cost per service episode below the predetermined budgeted average.

EVIDENCE APPENDIX

UNDER 37 C.F.R. § 41.37(c)(1)(IX)

- A copy of the Office Action mailed October 26, 2006 placing the present application under final rejection is provided

RELATED PROCEEDINGS APPENDIX - UNDER 37 C.F.R. § 41.37(c)(1)(x)

NONE.



UNITED STATES PATENT AND TRADEMARK OFFICE

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09/922,297	08/03/2001	Jane I. Potter	4371-000002	9688

7590

11/15/2006

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EXAMINER

FRENEL, VANEL

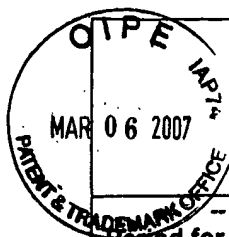
ART UNIT

PAPER NUMBER

3627

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.

09/922,297

Applicant(s)

POTTER ET AL.

Examiner

Vanel Frenel

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |



Application/Control Number: 09/922,297
Art Unit: 3627

Page 2

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the Amendment filed on 9/5/06. Claim 46 has been newly added. Claims 1-46 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torma et al (5,365,425) in view of Lockwood et al (5,845,254), for substantially the same reasons given in the previous Office Action, and incorporated herein. Further reasons are presented hereinbelow.

(A). As per claim 46, Lockwood discloses the method further comprising the step of periodically distributing information on the average cost per service episode to the health service provider, for motivating the health service provider to more efficiently manage service episodes to keep their cost per service episode below the predetermined budgeted average (See Lockwood, Col.13, lines 30-39).

(B) Claims 1-45 have not been amended and are therefore rejected for the same reasons given in the previous Office Action, and incorporated herein.

Response to Arguments

4. Applicant's arguments filed on 9/5/06 with respect to claims 1-46 have been fully considered but they are not persuasive.

(A) At pages 12-14, Applicant's argues the followings:

(1) Neither Torma nor Lockwood teach or suggest compensating a provider by sharing a portion of cost savings resulting from a reduction in cost per service, as an incentive method of compensating providers by sharing a portion of cost savings is not anticipated, and are allowable for at least these reasons.

(2) Neither Torma nor Lockwood teach or suggest a method for motivating health service providers that includes sharing a portion of cost savings in service episodes, which portion is based upon the group's performance on a quality and/or patient satisfaction indicator.

(B) With respect to Applicant's first argument, Examiner respectfully submitted that He had relied upon the teachings of Torma for such a feature(See Col.12, lines 47-57). Therefore, Applicant's argument is non-persuasive and the rejection is hereby sustained.

(C) With respect to Applicant's first argument, Examiner respectfully submitted that He had relied upon the teachings of Torma for such a feature(See Col.11, lines 26-47). Therefore, Applicant's argument is non-persuasive and the rejection is hereby sustained.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ALEX Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

V.F
V.F

November 7, 2006

Andrew Joseph Rudy
Primary Examiner
Art Unit 3627



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/922,297	
	Filing Date	August 3, 2001	
	First Named Inventor	Jane I. Potter	
	Art Unit	3627	
	Examiner Name	Vanel Frenel	
Total Number of Pages in This Submission	35	Attorney Docket Number	4371-000002

ENCLOSURES (check all that apply)				
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Copy of Office Action Check for \$500 Return postcard		
<table border="1"><tr><td>Remarks</td><td>The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.</td></tr></table>			Remarks	The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.
Remarks	The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.			

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name Kevin Pumm	Reg. No. 49,046
Signature			
Date	March 6, 2007		

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	Kevin Pumm	Express Mail Label No.	EV 844119181 US
Signature		Date	March 6, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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FEE TRANSMITTAL for FY 2007

Effective 2/8/2006. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500

Complete if Known

Application Number 09/922,297
Filing Date August 3, 2001
First Named Inventor Jane I. Potter
Examiner Name Vanel Frenel
Art Unit 3627
Attorney Docket No. 4371-000002

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit Account Number 08-0750

Deposit Account Name Harness, Dickey & Pierce, PLC

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge any additional fee(s) during the pendency of this application
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1011	300	2011	150	Utility filing fee	
1012	200	2012	100	Design filing fee	
1013	200	2013	100	Plant filing fee	
1014	300	2014	150	Reissue filing fee	
1005	200	2005	100	Provisional filing fee	
SUBTOTAL (1)					(\$) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

			Extra Claims		Fee from below		Fee Paid
Total Claims		-20 **	=	0	X		= 0
Independent Claims		-3 **	=	0	X		= 0
Multiple Dependent							= 0

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	50	2202	25	Claims in excess of 20
1201	200	2201	100	Independent claims in excess of 3
1203	360	2203	180	Multiple dependent claim, if not paid
1204	200	2204	100	** Reissue independent claims over original patent
1205	50	2205	25	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	500
1402	500	2402	250	Filing a brief in support of an appeal	
1403	1000	2403	500	Request for oral hearing	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1500	2453	750	Petition to revive - unintentional	
1462	400	1462	400	Petition fee under 37 CFR 1.17(f)	
1463	200	1463	200	Petition fee under 37 CFR 1.17(g)	
1464	130	1464	130	Petition fee under 37 CFR 1.17(h)	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid SUBTOTAL (3) (\$) 500

4. SEARCH/EXAMINATION FEES

1111	500	2111	250	Utility Search Fee	
1112	100	2112	50	Design Search Fee	
1113	300	2113	150	Plant Search Fee	
1114	500	2114	250	Reissue Search Fee	
1311	200	2311	100	Utility Examination Fee	
1312	130	2312	65	Design Examination Fee	
1313	160	2313	80	Plant Examination Fee	
1314	600	2314	300	Reissue Examination Fee	
SUBTOTAL (4)					(\$) 0

SUBMITTED BY

Complete (if applicable)

Name (Print/Type) Kevin Pumm Registration No. (Attorney/Agent) 49,046 Telephone 314-726-7500
Signature *Kevin Pumm* Date March 6, 2007

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